

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

1 Snow Covered Capital, LLC,

2 Case No. 2:22-cv-01181-CDS-DNW

3 Plaintiff

4 v.

5 Order Denying Defendant Jodi Fonfa's
6 Appeal of the Magistrate Judge's Order
7 Denying Her Motion for a Protective Order
8 and Granting Plaintiff's Counter motion to
9 Compel and For Sanctions

10 Defendants

11 [ECF No. 121]

12 Defendant Jodi Fonfa objects¹ (ECF No. 121) to Magistrate Judge Brenda Weksler's order
 13 (ECF No. 116) denying her motion for a protective order (ECF No. 104) and granting the plaintiff
 14 Snow Covered Capital, LLC's (SCC) counter motion to compel (ECF No. 107), which included a
 15 request for sanctions. In sum, Jodi² argues that Judge Weksler's order denying her motion for a
 16 protective order was clearly erroneous because: (1) the decision failed to consider that she had
 17 already answered questions regarding whether or not she controlled certain assets (the
 18 "Assets") relevant to this litigation; (2) the determination that the location and status of those
 19 assets was relevant is incorrect; and (3) disclosure of such personal, financial information (about
 20 the Assets) should be subject to a protective order. *See generally* Obj., ECF No. 121. Jodi also
 21 argues that granting SCC's motion for sanctions was contrary to the law because Jodi's actions
 22 in not answering additional questions regarding the location and status of the Assets were
 23 substantially justified. *Id.* SCC filed a response to the objections, arguing they should be rejected
 24 in full because the order properly denied Jodi's request for a protective order and properly
 25 granted its counter motion to compel Jodi to complete her deposition and answer questions
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¹ Fonfa objects to an order resolving non-dispositive pretrial motions, not a report and recommendation (R&R). *See* Order, ECF No. 116. There is a distinction between orders and R&Rs: magistrate judges' orders are subject to a lower, clearly erroneous or contrary to the law standard of review, whereas R&Rs are subject to de novo review. *Compare* LR IB 3-1(a) with LR IB 3-2(b). I thus apply the appropriate standard of review in resolving Fonfa's objections.

² I refer to defendant has "Jodi" throughout this order because there is a second Fonfa defendant (Evan) who is not a party to the pending objections.

1 regarding the Assets. *See generally* Resp., ECF No. 129. SCC also argues that Judge Weksler
 2 properly granted their request for sanctions, and Jodi's argument to the contrary is unsupported
 3 by applicable points and authorities. *Id.* at 11–13. For the reasons set forth herein, Jodi's
 4 objections are overruled. Judge Weksler's order denying Jodi's motion for a protective order and
 5 granting SCC's countermotion to compel and request for sanctions is affirmed in full.

6 **I. Legal Standard**

7 Where, as here, a magistrate judge issues a pre-trial order regarding a non-dispositive
 8 matter, any party may seek review by filing specific objections to the order. 28 U.S.C. §
 9 636(b)(1); Fed. R. Civ. P. 72(a); Local Rule (LR) IB 3-1. The district judge in the case must
 10 consider timely filed objections, but the court cannot modify or set aside any part of the order
 11 unless it is “clearly erroneous or is contrary to law.” *See* Fed. R. Civ. P. 72(a); *Doe v. Kamehameha*
 12 *Sch.*, 596 F.3d 1036, 1041 n.4 (9th Cir. 2010). A magistrate judge’s order is “clearly erroneous” if
 13 the court has “a definite and firm conviction that a mistake has been committed.” *United States v.*
 14 *U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *Burdick v. Comm'r*, 979 F.2d 1369, 1370 (9th Cir. 1992). A
 15 magistrate judge’s order is “contrary to law” if the order applies the incorrect legal stand or
 16 misapplies applicable law. *Na Pali Haweo Cnty. Ass’n v. Grande*, 252 F.R.D. 672, 674 (D. Haw. 2008);
 17 *see also UnitedHealth Grp., Inc. v. United Healthcare, Inc.*, 2014 WL 4635882, at *1 (D. Nev. Sept. 16,
 18 2014) (“An order is contrary to law when it fails to apply or misapplies relevant statutes, case
 19 law[,] or rules of procedure.”).

20 **II. Discussion**

21 Jodi’s objections are overruled because she fails to demonstrate that the magistrate
 22 judge’s order is clearly erroneous or contrary to the law. The court first addresses Jodi’s
 23 objections to the order denying her motion for a protective order and granting SCC’s
 24 countermotion to compel, and then addresses the award of sanctions against Jodi.

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1 A. The order denying Jodi's motion for a protective order is neither clearly
 2 erroneous nor contrary to the law.

3 Federal Rule of Civil Procedure 26(c) "confer[s] 'broad discretion on the trial court to
 4 decide when a protective order is appropriate and what degree of protection is required.'" *Phillips*
 5 *ex rel. Ests. of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (quoting *Seattle Times Co. v.*
 6 *Rhinehart*, 467 U.S. 20, 36 (1984)). Jodi argues that Judge Weksler's order denying her motion for
 7 a protective order and granting SCC's countermotion to compel was clearly erroneous because
 8 she "failed to consider that [she] already answered that she still controls the assets forming the
 9 basis of SCC's claims." ECF No. 121 at 3. But this is belied by the order specifically addressing
 10 this argument. Indeed, Judge Weksler rejected this same argument raised by Jodi in her motion
 11 to compel,³ writing "[t]he essence of [Jodi's] argument is that [SCC] is improperly seeking post-
 12 judgment discovery. That is especially so, she argues, given she has testified she still has the
 13 assets from the postnuptial agreement." Order, ECF No. 116 at 2. But Jodi misses the point. As
 14 explained by Judge Weksler

15 "[Q]uestions that relate to the alleged fraudulent transfers from Andrew Fonfa to
 16 Jodi Fonfa are relevant, even if these questions delve into the location and status of
 17 those assets. The information sought is not only relevant to Plaintiff's ability to
 18 request the appropriate equitable remedy; it is relevant to its ability to trace the
 19 transfers in question. In turn, it follows that such questions are proportional to the
 20 needs of the case—indeed, that is what this case is all about."

21 *Id.* at 4 (emphasis added).

22 Jodi further argues that the SCC's interest in obtaining more information about the
 23 Assets is "premature" and therefore the order requiring that Jodi answer questions regarding the
 24 Assets was contrary to the law. ECF No. 121 at 8–9. While not stated as "premature" in her
 25 motion for a protective order, Jodi advanced similar arguments therein, writing that "even if
 26 SCC were to succeed on one or more of its claims, that does not entitle SCC to discovery into

³ Compare Mot. for a Protective Order, ECF No. 104 at 7 (citing *Hetter v. Eighth Judicial Dist. Court of State in and for Cnty. of Clark*, 110 Nev. 513 (1994) to argue that Nevada does not allow discovery of personal financial information of a party without the requesting party to first demonstrate a factual basis for needing that information) with Obj., ECF No. 121 at 9 (same).

1 her current assets as addressed in the Deposition Questions.” Mot., ECF No. 104 at 8. But Jodi
 2 fails to cite binding or even persuasive points and authorities in support of her argument.
 3 Instead, she again relies upon *Hetter v. Eighth Judicial District Court*⁴ and *Fosbre v. Las Vegas Sands*
 4 *Corp.*⁵ As noted by Judge Weksler, Jodi’s reliance on the *Hetter* case is misplaced. That case
 5 addresses limitations on discovering tax information and discusses when a party can obtain
 6 discovery as it relates to punitive damages. But Jodi’s taxes (or an attempt to discover them) and
 7 punitive damages are not at issue here: SCC is seeking discovery relating to the transfer of the
 8 Assets. As for the *Fosbre* decision, it is actually contrary to Jodi’s argument. There, the court held
 9 that a party’s financial condition can be obtained through discovery if it is relevant to a claim or
 10 defense. 2016 WL 54202, at *4; *see also* Fed. R. Civ. P. 26(b)(1) (The “scope of discovery”
 11 encompasses “any nonprivileged matter that is relevant to any party’s claim or defense and
 12 proportional to the needs of the case[.]”). Indeed, courts consistently reach this conclusion. *See*
 13 *Dinkins v. Schinzel*, 2018 WL 456876, at *2 (D. Nev. Jan. 17, 2018) (collecting cases reaching same
 14 conclusion).

15 This action alleges defendants were “insiders” connected to the alleged fraudulent
 16 transfers of the Assets. *See generally* Second Am. Comp., ECF No. 147. “The Uniform Fraudulent
 17 Transfers Act (UFTA)... ‘is designed to prevent a debtor from defrauding creditors by placing the
 18 subject property beyond the creditors’ reach.’” *Donell for J.T. Wallenbrock & Assocs. V. Braun*, 2010
 19 WL 11635980, at *2 (D. Nev. Apr. 6, 2010) (quoting *Herup v. First Bos. Fin., LLC*, 162 P.3d 870, 872
 20 (Nev. 2007)). Under the UFTA, “[a] transfer made or obligation incurred by a debtor is
 21 fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was
 22 made or the obligation incurred, if the debtor made the transfer or incurred the obligation . . .
 23 [w]ith actual intent to hinder, delay[,] or defraud any creditor of the debtor[.]” Nev. Rev. Stat. §
 24 112.180(1) (emphasis added). While it is helpful to know that Jodi still controls the Assets in
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⁴ 874 P.2d 762 (1994).

⁵ 2016 WL 54202, at *4 (D. Nev. Jan. 5, 2016).

1 question, SCC is entitled to know what happened to the Assets both before and after the
 2 alleged fraudulent transfers as part of its claims.

3 I find that Judge Weksler properly utilized her broad discretion in denying Jodi's motion
 4 for a protective order and in granting SCC's countermotion to compel. Jodi's objections fail to
 5 cite new, binding, or even persuasive authority to support an argument that Judge Weksler's
 6 order was clearly erroneous or contrary to the law. Consequently, her objections are overruled,
 7 and the order denying Jodi's motion for protective order and granting SCC's countermotion to
 8 compel is affirmed.

9 **B. The magistrate judge's order granting SCC's motion for sanctions is sound and is
 10 affirmed.**

11 The court has broad discretion as to whether and what type of sanctions should be
 12 awarded under Rule 37. *See Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 784 (9th Cir.
 13 1983). The court may decline to award sanctions when the conduct at issue was either
 14 "substantially justified" or "other circumstances make an award of expenses unjust." Fed. R. Civ.
 15 P. 37(b)(2)(C). "Before awarding sanctions under its inherent powers, ... the court must make an
 16 explicit finding that counsel's conduct 'constituted or was tantamount to bad faith.'" *Primus
 17 Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 648 (9th Cir. 1997) (quoting, in part, *Roadway Express,
 18 Inc. v. Piper*, 447 U.S. 752, 767 (1980)). A party exhibits bad faith "by delaying or disrupting the
 19 litigation or hampering enforcement of a court order." *Id.* at 649. This is a high threshold,
 20 meaning "mere recklessness, without more, does not justify sanctions under a court's inherent
 21 power." *Fink v. Gomez* 239 F.3d 989, 992 (9th Cir. 2001).

22 Further, under Rule 37(b), when addressing a motion for sanctions, the opposing party
 23 (the party to be sanctioned) carries the burden of demonstrating the existence of mitigating
 24 factors. *See Liew v. Breen*, 640 F.2d 1046, 1050 (9th Cir. 1981) (citing *David v. Hooker, Ltd.*, 560 F.2d
 25 412, 419 (9th Cir. 1977)). An otherwise sanctionable action could be "substantially justified" if
 26 "reasonable people could differ" over the appropriateness of the conduct. *See Reygo Pac. Corp. v.*

1 *Johnston Pump Co.*, 680 F.2d 647, 649 (9th Cir. 1982); *see also Pierce v. Underwood*, 487 U.S. 552, 565
2 (1988) (noting the “substantially justified” standard in Rule 37 does not mean “justified to a high
3 degree of certainty” but rather “satisfied if there is a ‘genuine dispute’” about the propriety of the
4 conduct at issue).

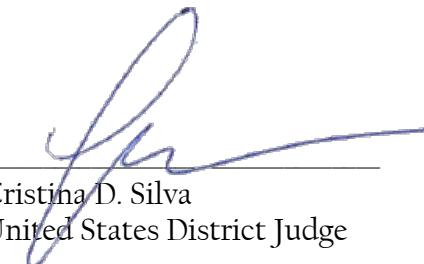
5 Jodi fails to meet her burden showing the existence of mitigating factors. She argues that
6 she was substantially justified in refusing to answer questions about the Assets based on the
7 *Hetter* decision. But as addressed above, that case is inapposite. Moreover, Jodi provides no
8 explanation or anything else explaining her decision to walk out of the deposition, instead of
9 lodging an appropriate objection and allowing the deposition to continue as required by Rule
10 30. Fed. R. Civ. P. 30(c)(2) (instructing a party believing a question is improper to lodge the
11 objection “on the record, but the examination still proceeds; the testimony is taken subject to
12 any objection.”). The only time counsel may instruct a deponent not to answer the question is
13 “when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to
14 present a motion under Rule 30(d)(3). *See* Fed. R. Civ. P. 30(c)(2); *see also Nathalie Thuy Van v.*
15 *Steakhouses*, 2018 U.S. Dist. Lexis 243951 (N.D. Cal., Sept. 26, 2018) (declining to impose
16 sanctions where deponent was instructed not to answer questions based on assertion of
17 attorney-client privilege). None of those exceptions apply here, yet counsel and Jodi walked out
18 of the deposition and refused to answer any more questions. Jodi fails to cite or advance any
19 other points and authorities demonstrating that her behavior was justified, much less that Judge
20 Weksler’s order granting sanctions was either contrary to the law or clearly erroneous.
21 Accordingly, Judge Weksler’s award of expenses, including attorney’s fees, was sound and Jodi’s
22 objection thereto is overruled.

1 III. Conclusion

2 IT IS THEREFORE ORDERED that Jodi Fonfa's objections to Judge Weksler's order
3 [ECF No. 121] are OVERRULED.

4 IT IS FURTHER ORDERED that Judge Weksler's August 11, 2023 order [ECF No. 116] is
5 AFFIRMED and ADOPTED in its entirety. Jodi Fonfa must comply with all the requirements
6 set forth in the order.

7 Dated: June 26, 2024

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9 Cristina D. Silva
10 United States District Judge

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